UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/557,298	03/08/2006	Fabienne Miler	102792-504 (11234P1)	9240

27389 7590 09/18/2008

NORRIS, MCLAUGHLIN & MARCUS
875 THIRD AVE
18TH FLOOR
NEW YORK, NY 10022

EXAMINER
LALLI, MELISSA LYNN

ART UNIT	PAPER NUMBER
3728	

MAIL DATE	DELIVERY MODE
09/18/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/557,298	MILER, FABIENNE	
	Examiner	Art Unit	
	MELISSA L. LALLI	3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *12 June 2008*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-16 and 18-20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-13, 15, 16, 18, and 19* is/are rejected.

7)☐ Claim(s) *14 and 20* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. Amendment received on June 12, 2008 has been acknowledged. The amendment to the specification, amended claims 12 and 19, and canceled claim 17 are entered. Therefore, claims 1-16 and 18-20 are pending.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1, 2, 4-7, 9, 10, and 16 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Application Publication No. 2005/0261155 to Wiedemann et al. (Wiedemann).

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Regarding claim 1, Wiedemann discloses a filled water-soluble injection molded (paragraph [0017]) container (fig. 4, 1) containing a first composition (3) held in a first

compartment (10) and a second composition (15) held in a second compartment (4), said first compartment and said second compartment being separated by a water-soluble barrier (5) having an opening (fig. 4 discloses an opening in the barrier where the plug 20 resides since the outline surrounding the plug is not bold as shown where the plug touches the outer wall 2) plugged by a plug (20). The container is capable of being arranged such that the first compartment is filled with the first composition through the opening in the barrier, the barrier is plugged with the plug, the second compartment is filled with the second composition, and the second compartment is sealed with a closure part (fig. 4). Additionally, the method of forming the device is not germane to the issue of patentability of the device itself. Therefore, this limitation has not been given patentable weight.

Regarding claims 2 and 4, Wiedemann discloses the closure part being a water-soluble film (paragraph [0045], lines 8-9). The plug (20) is spherical (paragraph [0014], lines 3-5).

Regarding claims 5-7, Wiedemann discloses the first composition (10) and the second composition (15) are each a fabric care, surface care, dishwashing, water-softening, laundry, detergent, rinse aid composition, disinfectant, antibacterial, or antiseptic composition (paragraph [0030]).

Regarding claim 9, Wiedemann discloses an unfilled water-soluble injection molded (paragraph [0017]) container (fig. 4, 1) containing a first compartment (10) and a second compartment (4), said first compartment and said second compartment being separated by a water-soluble barrier (5) having an opening (fig. 4 discloses an opening

in the barrier where the plug 20 resides since the outline surrounding the plug is not bold as shown where the plug touches the outer wall 2). The container is capable of being arranged such that the first compartment is filled through the opening in the barrier, the barrier is capable of being plugged with a plug, and the second compartment is filled through another opening. It is inherent that a container must be unfilled before it is filled; therefore claim 9 is fully anticipated. Additionally, the process of forming the device is not germane to the issue of patentability of the device itself in an article claim. Therefore, the process has no patentable weight.

Regarding claims 10 and 16, Wiedemann discloses the container (1) being made from a poly(vinyl alcohol) (PVOH) (paragraph [0020]).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 3 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wiedemann.

Regarding claims 3 and 15, Wiedemann does not specify the composition of the plug (20). It is stated that the plug is a particulate, granulated solid, or a tablet (paragraph [0026], lines 3-4) and that the plug must be insoluble in the fluid phase of the detergent composition (claim 1). It would been obvious to one having ordinary skill in the art at the time of the invention to have made the plug water-soluble as long as it is

insoluble in the fluid phase of the detergent composition since Wiedemann discloses a package detergent composition which disintegrates in an aqueous environment. It has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

6. Claims 8, 11-13, 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wiedemann in view of U.S. Patent Application Publication No. 2004/0118711 to Duffield.

Regarding claim 8, Wiedemann does not disclose the first composition and second composition each being an agricultural composition; however, Duffield discloses a similar multi-compartment water soluble container (fig. 3) with a first composition (1) and a second composition (2) each being an agricultural composition (paragraph [0111]). It would have been obvious to one having ordinary skill in the art for the first and second compositions of Wiedemann to be agricultural as taught by Duffield as a matter of design choice and intended use.

Regarding claims 11 and 18, according to the modification of Wiedemann by Duffield as discussed in the rejection of claim 8 above, Wiedemann discloses the first compartment (3) being defined by a lower surface (2) and the barrier (5), the lower surface and the barrier being substantially parallel (fig. 4); however, walls extending between the lower surface and the barrier are not disclosed. Duffield discloses a first compartment (1) defined by a lower surface (unlabeled lower surface of first compartment 1), a barrier (unlabeled water-soluble film between first compartment 1

and second compartment 2) and walls extending therebetween (unlabeled walls of first compartment 1 extend from lower surface to the barrier), the lower surface and the barrier being substantially parallel (fig. 3). It would have been an obvious matter of design choice to apply the configuration of the compartments of Duffield to the container of Wiedemann, since such a modification would have involved a mere change in the shape of a component. A change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ 47.

Regarding claims 12 and 19, according to the modification of Wiedemann by Duffield as discussed in the rejection of claims 11 and 18 above, Duffield discloses the second compartment (fig. 3, 2) defined by an opening (paragraph [0013], lines 5-7, there is an opening before the second compartment is sealed with a closure part), the barrier (unlabeled water-soluble film between first and second compartments) and walls extending therebetween (unlabeled walls of second compartment extend from the barrier).

Regarding claim 13, according to the modification of Wiedemann by Duffield as discussed in the rejection of claims 11 and 18 above, Duffield discloses the container being cuboid in shape (fig. 3). It is obvious that the container of Duffield resembles a cube. It is further noted that a mere change in shape not affecting the function in considered obvious to the skilled artisan.

Response to Arguments

7. Applicant's arguments with respect to claims 1-20 have been considered but are moot in view of the new ground(s) of rejection.

Allowable Subject Matter

8. Claims 14 and 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELISSA L. LALLI whose telephone number is (571)270-5056. The examiner can normally be reached on Monday-Friday 7:30 AM-5:00 PM (EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

10. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Mickey Yu/
Supervisory Patent Examiner, Art Unit 3728

/Melissa L Lalli/
Examiner, Art Unit 3728